

THE HONORABLE JUSTIN L. QUACKENBUSH

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

FRANK GODFREY, on his own behalf  
and on behalf of all others similarly  
situated, ED TIPPEN, on his own behalf  
and on behalf of all others similarly  
situated, RON EMTER, on his own behalf  
and on behalf of all others similarly  
situated, BRYAN WILLIAMS, on his own  
behalf and on behalf of all others similarly  
situated,

Plaintiffs,

v.

CHELAN COUNTY PUBLIC UTILITY  
DISTRICT,

Defendant.

CLASS ACTION

NO. 2:06-CV-00332-JLQ

**PLAINTIFFS'  
MEMORANDUM IN  
SUPPORT OF FINAL  
APPROVAL OF  
SETTLEMENT AGREEMENT**

PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
FINAL APPROVAL OF SETTLEMENT  
AGREEMENT - 1  
CASE NO. 2:06-CV-00332-JLQ

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## I. INTRODUCTION

Plaintiffs respectfully submit this memorandum in support of final approval of the settlement agreement reached between Plaintiffs and Defendant Chelan County PUD. For the reasons set forth in this memorandum and in the papers previously submitted in support of approval, the settlement agreement is fair and reasonable and serves the best interests of the Class. Accordingly, Plaintiffs respectfully request that the Court enter the Proposed Order of Final Settlement Approval and of Dismissal with Prejudice submitted herewith.

## II. AUTHORITY AND ARGUMENT

### A. The Settlement Was the Result of Arm's-Length Negotiations

On March 13, 2008, the parties engaged in a day-long mediation with mediator Gary Bloom, in Spokane, Washington. Declaration of Toby J. Marshall: (1) Regarding Due Diligence and Proof of Mailing of Class Notice, and (2) in Support of Final Approval of Settlement Agreement ("Marshall Decl.") ¶ 2. During the mediation, which was attended by named Plaintiffs and Class Representatives Frank Godfrey and Bryan Williams, the parties argued their positions and cited supporting evidence. *Id.* Ultimately, the parties agreed to resolve the claims of the Class for a lump sum cash payment of \$155,000. *Id.* The PUD also agreed to make a lump sum cash payment to Class Counsel of \$205,000 for their attorneys' fees and costs. *Id.* Both of these amounts were approved by the Class Representatives. *Id.*

1 As the Court found in its Preliminary Order Re: Settlement, Directing  
 2 Issuance of Class Notice, and Scheduling Fairness Hearing (“Preliminary  
 3 Approval Order”) (Doc. 191), the settlement agreement resulted from “arm’s-  
 4 length negotiations between experienced attorneys who are familiar with class  
 5 action litigation in general and with the legal and factual issues of this case in  
 6 particular.” Preliminary Approval Order ¶ 1.

7 **B. The Settlement Will Be Divided Proportionately Among the**  
 8 **Class Members in a Fair and Reasonable Manner**

9 If the settlement agreement is approved by the Court, the \$155,000  
 10 payment to the Class will be divided proportionately among members pursuant to  
 11 the factors and calculations set forth in Paragraphs 3 through 10 of the  
 12 Supplemental Declaration of Toby J. Marshall in Support of Preliminary  
 13 Approval (Doc. 182). In essence, the settlement payment is fairly allocated based  
 14 on shift turnovers worked and average rate of pay. *See* Marshall Decl. ¶ 3. A  
 15 spreadsheet listing the individual awards by Class member is attached as Exhibit  
 16 3 to the declaration submitted in support of this memorandum. *See* Ex. 3 to  
 17 Marshall Decl.

18 The settlement awards that individual Class members will receive range  
 19 from a low of \$34.75 to a high of \$4,829.94. *See* Ex. 3 to Marshall Decl. The  
 20 average recovery is \$2,183.10. *See* Marshall Decl. ¶ 3. The method used to  
 21 calculate individual settlement awards was discussed with and agreed to by the  
 22 Class representatives during mediation. *See id.* ¶ 4. In addition, Class Counsel  
 23 understands that information regarding this method was widely circulated among

1 Class members. *Id.* To date, counsel has not heard any objections, negative  
 2 feedback, or suggestions of alternative approaches. *Id.*

3 **C. The Settlement Payment to the Class Exceeds or Is a Substantial**  
 4 **Percentage of the Recovery Available under the Law**

5 Class Counsel has calculated the maximum potential recovery for the  
 6 statutory wage claims brought against the PUD. *See* Ex. 1 to Marshall Decl.  
 7 Based on those calculations, Class Counsel has determined that the settlement  
 8 payment the Class will receive exceeds the total recovery available to the Class  
 9 under the Washington Minimum Wage Act, the Washington Wage Payment Act,  
 10 and the Fair Labor Standards Act. *See* Ex. 1 to Marshall Decl.; *see also*  
 11 Plaintiffs' Supplemental Memorandum in Support of Preliminary Approval (Doc.  
 12 185) at 9:4 – 15:18 (explaining claims and calculations). With respect to the  
 13 Wage Rebate Act – the most difficult of the Class claims to prove because it  
 14 requires a showing of willfulness on the part of the PUD – the settlement  
 15 payment ranges from 31 to 71 percent of the potential recovery, depending on  
 16 whether the underlying wage rates are contractually or statutorily based. *See id.*  
 17 Thus, the settlement payment to the Class is substantial in light of the relief  
 18 available under the law.

19 **D. The Settlement Payment Is Fair and Reasonable Considering the**  
 20 **Relative Merits of the Alleged Claims and Defenses**

21 Entering into mediation Plaintiffs were confident in the strength of their  
 22 case but also pragmatic in their awareness of the risks inherent to litigation and  
 23 the various defenses available to the PUD. The reality that Class members could

1 recover only a fraction of their claimed damages or even lose at trial was  
2 significant enough to convince Plaintiffs and Class Counsel that the benefits of  
3 the settlement reached with the PUD outweighed the gamble of continued  
4 litigation.

5       Among its defenses, for example, the PUD has argued that Class members  
6 “rarely” worked 15 minutes on a shift turnover. If the PUD were able to convince  
7 a jury that the average time spent on a shift turnover was actually 10 minutes,  
8 rather than 15, the PUD would effectively reduce the damages recoverable on any  
9 claim by one-third. Similarly, if the PUD were to prevail on its argument that  
10 Class members are “fluctuating workweek” employees, the potential damages for  
11 overtime would be reduced by two-thirds under both state and federal law.

12       Another risk Plaintiffs would face going forward is the loss of the class or  
13 collective action status of the case. The PUD has steadfastly argued that  
14 differences in job duties among the Class members necessarily mean that  
15 individual issues predominate. If the PUD were able to present convincing facts  
16 to support these allegations, the Court could find it necessary to decertify the  
17 Class, leaving only the four named Plaintiffs to pursue their claims.

18       Finally, the risk of losing is inherent in any jury trial. Even if Plaintiffs did  
19 prevail, any recovery could be delayed for years by an appeal. The settlement  
20 obtained provides substantial monetary relief to Class members without further  
21 delay.<sup>1</sup>

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22  
23 <sup>1</sup> A more complete discussion of these and other risks can be found at pages 15  
through 22 of Plaintiffs’ Supplemental Memorandum of Points and Authorities in  
PLAINTIFFS’ MEMORANDUM IN SUPPORT OF  
FINAL APPROVAL OF SETTLEMENT

**E. The Work Done by Class Counsel Was Reasonable and Necessary, and the Payment of Fees and Costs Is Fair**

Class counsel diligently prosecuted this case from beginning to end while making every reasonable attempt to minimize fees and costs. The PUD zealously defended against the claims of the Class, however, necessitating a substantial amount of work. As detailed in Plaintiffs' Supplemental Memorandum in Support of Preliminary Approval (Doc. 185) and the contemporaneous time records attached to the Second Supplemental Declaration of Toby J. Marshall in Support of Preliminary Approval (Doc. 194), Class counsel spent significant amounts of time investigating the claims of the Class, performing discovery, conducting legal research, briefing motions, preparing for trial, and engaging in settlement negotiations. Class Counsel also spent a significant amount of time calculating the individual awards of Class members and submitting materials in support of approval of the settlement agreement.

To date, the attorneys' fees and litigation expenses incurred by Class Counsel amount to more than \$316,000. *See* Marshall Decl. ¶ 12. The payment of \$205,000 provided for in the settlement agreement is less than 65 percent of this total. *Id.* All in all, Class counsel worked hard to bring this case to a successful resolution in the face of a staunch defense, and the payment called for under the settlement agreement is fair and reasonable.

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Support of Unopposed Motion for Preliminary Approval of Settlement Agreement (Doc. 185).

PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
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**F. The Class Members Do Not Object to the Settlement Agreement**

On June 6, 2008, Class Counsel distributed notice of the settlement by first-class mail to every Class member. *See* Marshall Decl. ¶ 7. Included with the notice was a spreadsheet listing the estimated individual settlement awards for all Class members. *Id.*

Pursuant to the Court's Preliminary Approval Order, Class members had 30 days after the initial mailing of the settlement notice to file with the Court and serve on Class Counsel and counsel for Defendant any written objections to the settlement agreement. *See* Preliminary Approval Order (Doc. 191) at ¶ 7. The Court's order provided that any Class member who does not timely submit an objection in the manner provided by the Court is deemed to have waived such objection and is foreclosed from making any objection to the fairness or adequacy of the proposed settlement agreement, unless otherwise ordered by the Court. *See id.*

The deadline for the filing objections to the settlement agreement was July 7, 2008. *See* Marshall Decl. ¶ 11. As of today's date, Class Counsel has not received any objections to the settlement agreement, written or otherwise. *See id.*

**III. CONCLUSION**

The settlement that the Class reached with the PUD is reasonable and fair. Indeed, the payment of \$155,000 to members is outstanding in light of the recoveries potentially available under the law and the risks of continued litigation. As for attorneys' fees and costs, the payment of \$205,000 to Class counsel is appropriate given the substantial work counsel performed and the successful

1 resolution achieved on behalf of the Class. For these reasons, Plaintiffs  
2 respectfully request that the Court enter the Proposed Order of Final Settlement  
3 Approval and of Dismissal with Prejudice submitted herewith.

4 At the Final Approval Hearing set to be held at 1:30 p.m. on Thursday, July  
5 17, 2008, Class Counsel will address any remaining questions the Court may  
6 have.

7 DATED this 10th day of July, 2008.

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9  
10 By: /s/ Toby J. Marshall, WSBA #32726

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED at Seattle, Washington, this 10th day of July, 2008.

/s/ Toby J. Marshall

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